

AMENDED IN ASSEMBLY MAY 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 102

Introduced by Assembly Members Pacheco and Harman

(Principal coauthor: Assembly Member Bates)

(Coauthors: Assembly Members Benoit, Bogh, Campbell, Cox, Daucher, Dutton, Haynes, La Suer, Leslie, Maze, Mountjoy, Plescia, Runner, Spitzer, and Wyland)

(Coauthors: Senators Aanestad, Johnson, Knight, Margett, and Oller)

January 10, 2003

An act to amend Section 17204 of, and to add Chapter 6 (commencing with Section 17300) to Part 2 of Division 7 of, the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 102, as amended, Pacheco. Unfair competition.

Under existing law, unfair competition is defined to include an unlawful, unfair, or fraudulent business act or practice, unfair, deceptive, untrue, or misleading advertising, and any false representations to the public. Existing law authorizes an action for relief from this prohibited conduct to be brought by the Attorney General, a district attorney, a county counsel, or a city attorney, or by any person acting for the interests of itself, its members, or the general public, and provides various remedies, including injunctive relief, restitution, and civil penalties.

This bill would impose various requirements with respect to an unfair competition action that is brought by a person other than the Attorney

General, a district attorney, a county counsel, or a city attorney, which action would be known as a “representative civil action.” The bill would, among other matters, authorize the judge hearing the action to consider mitigating actions of the defendant, including a letter documenting under penalty of perjury that the acts of unfair competition have been corrected. Because the bill would require that this statement be made under penalty of perjury, it would impose a state-mandated local program by expanding the crime of perjury.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) The intent of this state’s unfair competition law set forth in
4 Chapter 5 (commencing with Section 17200) of Part 2 of Division
5 7 of the Business and Professions Code is to protect California
6 businesses and consumers from deceptive and anticompetitive
7 business acts or practices.

8 (b) It is the intent of the Legislature that the Attorney General,
9 district attorneys, county counsels, and city attorneys shall
10 maintain their public protection authority and capability under the
11 unfair competition law.

12 (c) It is the intent of the Legislature that the amendments made
13 by this act shall not diminish the ability of a business entity to bring
14 suit against a direct competitor for anticompetitive behavior.

15 (d) The unfair competition law is being misused by a
16 significant number of private attorneys as a means of generating
17 attorneys’ fees without creating a corresponding public benefit in
18 certain situations, including the following:

19 (1) Filing a lawsuit for a client who has not used the defendant’s
20 product or service, viewed the defendant’s advertising, or had any
21 other business dealing with the defendant.



1 (2) Filing a lawsuit with no evidence of present harm resulting
2 from an activity ~~which~~ *that* a defendant has already voluntarily
3 terminated.

4 (3) Filing repetitive claims on behalf of the general public over
5 issues and activities that have already been resolved by a prior
6 claim on behalf of the general public.

7 (e) California businesses may be subjected to unjustified and
8 unfair economic harassment when a private attorney, for tactical
9 advantage, adds an unfair competition law claim to another
10 lawsuit.

11 SEC. 2. Section 17204 of the Business and Professions Code
12 is amended to read:

13 17204. (a) Actions for any relief pursuant to this chapter shall
14 be prosecuted exclusively in a court of competent jurisdiction by
15 the Attorney General or any district attorney or by any county
16 counsel authorized by agreement with the district attorney in
17 actions involving violation of a county ordinance, or any city
18 attorney of a city, or city and county, having a population in excess
19 of 750,000, and, with the consent of the district attorney, by a city
20 prosecutor in any city having a full-time city prosecutor or, with
21 the consent of the district attorney, by a city attorney in any city and
22 county in the name of the people of the State of California upon
23 their own complaint or upon the complaint of any board, officer,
24 person, corporation or association or by any person acting for the
25 interests of itself, its members or the general public.

26 (b) An action for relief pursuant to this chapter by a person,
27 other than by the Attorney General, a district attorney, a county
28 counsel, or a city attorney, acting for the interests of the general
29 public shall be subject to Chapter 6 (commencing with Section
30 17300) and shall be known as a “representative civil action.”

31 SEC. 3. Chapter 6 (commencing with Section 17300) is added
32 to Part 2 of Division 7 of the Business and Professions Code, to
33 read:

34
35 CHAPTER 6. REPRESENTATIVE CIVIL ACTIONS BY PRIVATE
36 PLAINTIFFS
37

38 17300. A representative civil action may be brought and
39 maintained if all of the following requirements are met:

1 (a) The plaintiff has suffered distinct and palpable injury as a
2 result of the acts or practices prohibited by Chapter 5
3 (commencing with Section 17200), is an adequate representative
4 of the interests of the general public, has retained an attorney who
5 will adequately represent the interests of the general public, and
6 has claims typical of the claims of the general public.

7 (b) The private action is commenced not less than 90 days from
8 the date that the plaintiff has served a copy of a notice of intent to
9 sue on the defendant or defendants. The notice of the intent to sue
10 shall describe the acts of unfair competition committed by the
11 defendant.

12 (c) Neither the Attorney General, any district attorney, any city
13 attorney, or any county counsel has commenced an action against
14 the same defendant alleging substantially similar facts and theories
15 of liability.

16 (d) No other private plaintiff has commenced a representative
17 civil action against the same defendant alleging substantially
18 similar facts and theories of liability.

19 17301. As soon as practicable after the bringing of a
20 representative civil action, the court shall determine by order
21 whether the action may be maintained.

22 17302. The scope of discovery in a representative civil action
23 brought by a private party that alleges a violation of Chapter 5
24 (commencing with Section 17200) shall be limited to those
25 matters relevant to the unlawful, unfair, or fraudulent acts
26 specifically alleged in the complaint. In all representative civil
27 actions alleging a violation of Chapter 5 (commencing with
28 Section 17200), discovery shall be governed by all of the
29 following rules:

30 (a) The plaintiff's attorney shall present to the court a
31 declaration certifying that to the best of the attorney's knowledge,
32 information, and belief, formed after an inquiry reasonable under
33 the circumstances, that the discovery requested meets all of the
34 following:

35 (1) It is not being presented for any improper purpose, such as
36 to discover information to be used in another lawsuit, to harass, or
37 to cause unnecessary delay or needless increase in the cost of
38 litigation.

39 (2) It does not constitute an invasion of the privacy of any
40 person who is not currently a party to the lawsuit.

1 (3) It is related to specific, nonconclusory factual allegations
2 set forth in the complaint that establish cognizable injury to the
3 plaintiff or others similarly situated.

4 (4) The likely benefit of the proposed discovery outweighs its
5 burden or expense, taking into account the needs of the case, the
6 amount in controversy, the parties' resources, the importance of
7 the issues at stake in the lawsuit, and the importance of the
8 proposed discovery in resolving the issues.

9 (5) It will not result in annoyance, embarrassment, oppression,
10 or undue burden or expense to any party.

11 (b) The court may for good cause, at the request of any party,
12 or on its own motion, limit the number of depositions, requests for
13 admissions, or interrogatories and may also limit the length of
14 depositions.

15 (c) No party may propound discovery of records or information
16 concerning persons not named in the complaint unless the court
17 finds all of the following:

18 (1) The records or information are relevant to the unlawful,
19 unfair, or fraudulent acts specifically alleged in the complaint.

20 (2) The burden of producing the records or information is
21 outweighed by the need for the records or information.

22 (3) The infringement upon the privacy of the persons not
23 named in the complaint is outweighed by the need for the records
24 or information.

25 17303. In a representative civil action, the court may consider
26 mitigating actions taken by the defendant before the end of the
27 90-day period described in subdivision (b) of Section 17300 that
28 correct the act of unfair competition described in the notice of
29 intent to sue. The mitigating actions the court may consider
30 include a certified letter provided to the plaintiff by the defendant
31 documenting, under penalty of perjury, that the act has been
32 corrected. The court, in determining the remedy to impose, may
33 consider the mitigating actions taken by the defendant.

34 SEC. 4. It is the intent of the Legislature that the provisions
35 of this act shall not diminish the enforcement powers of the
36 Attorney General, a district attorney, a county counsel, or a city
37 attorney under Chapter 5 (commencing with Section 17200) of
38 Part 2 of Division 7 of the Business and Professions Code.

39 SEC. 5. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

